

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ranade.

BUDHO (ORIGINAL PLAINTIFF), APPELLANT, v. KESO AND ANOTHER
(ORIGINAL DEFENDANTS), RESPONDENTS.*

1896.

February 25.

Jurisdiction—Subordinate Judge—Pátel and kulkarni of village—Official act—Impressment of bullocks by pátel and kulkarni of village for use of Government officer—Suit for damage—Act X of 1876—Act XIV of 1869, Sec. 32.

The pátel and kulkarni of a village having impressed a pair of bullocks belonging to the plaintiff for the use of an ábkári inspector, the plaintiff sued them for damages in the Court of a Subordinate Judge. The defendants pleaded (*inter alia*) that the Subordinate Judge had no jurisdiction to try the suit under the Bombay Revenue Jurisdiction Act (X of 1876).

Held, that the suit was properly instituted in the Court of the Subordinate Judge, as the defendants were sued in their private capacity.

It is not clear that the rules about impressment of carts found in Chapter I of Nairne's Revenue Hand-book actually order the village pátel to impress carts against the owner's will : neither is it clear what officers are to be supplied. There is nothing to show that any law ever imposed this duty on a kulkarni, or that provision was made after the repeal of the Regulation of 1818 as regards pátel except for military bodies.

SECOND appeal from the decision of G. C. Whitworth, District Judge of Khándesh. The defendants, who were the police pátel and the kulkarni of a village, impressed a pair of bullocks belonging to the plaintiff for the use of a district ábkári inspector. The plaintiff sued them in the Court of the Subordinate Judge to recover damages for their wrongful act.

The defendants pleaded that under the Bombay Revenue Jurisdiction Act (X of 1876) the Subordinate Judge's Court had no jurisdiction to try the suit.

The Subordinate Judge held that he had jurisdiction and awarded the plaintiff's claim.

In appeal the District Judge reversed the decree and referred the plaintiff to the District Court. In his judgment he said :—

“When this appeal was first argued before me, the question of jurisdiction was considered mainly with reference to the Bombay Revenue Jurisdiction Act (X of 1876). I have had the point re-argued to-day with reference to the Bombay Civil Courts Act, 1869. Section 32 of this Act seems to me to bar the jurisdiction of the Subordinate Judge. It is argued that the defendants are not sued in their official capacity, because they were not legally entitled to do the act complained of. But there would be no

* Second Appeal, No. 470 of 1895.

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occasion for this provision of law at all if it were not meant to cover the cases of acts which though not justifiable, are yet done in an official capacity. Besides, it seems to me clear that the pátel and kulkarni were acting in their official capacity when they impressed carts for a Government officer's use. And, indeed, it is a part of the complaint that they did the act by virtue of their official position (*amalache baláne*). If they were actuated by spite or by any improper motive in impressing the plaintiff's bullocks in particular, the case might be a proper one for damages. But still the cause of action would be an abuse of official power and not a private act."

From this decision the plaintiff preferred a second appeal to the High Court.

Shivram Vithal Bhandarkar for the appellant-plaintiff:—Defendants were not sued in their official capacity, and the Subordinate Judge has jurisdiction: see *William Allen v. Bai Shri Dariaba*⁽¹⁾. The defendants had no power to impress the bullocks—*In re the petition of Rakhmaji*⁽²⁾; *Bankat Hargovind v. Narayan*⁽³⁾; *Gopi v. Shesho*⁽⁴⁾.

Balaji Abaji Bhagavat, for the respondents-defendants:—Officers, such as the pátel and kulkarni, are required to render assistance to Government officers: see Act II of 1843, section 2, and Bombay Act III of 1874, sections 83 and 84. The acts of the defendants, therefore, were done in their official capacity.

JARDINE, J.:—We do not think that the plaint shows on the face of it that the suit was one which under section 32 of Act XIV of 1869 could only be instituted in the Court of the District Judge. The authorities show that the plaintiff suing an official in his private capacity is not bound in the first instance to go to that Court. It is open to the defendant official when sued in his private capacity to allege and prove as a defence that the act done, whether tortious or not, was done in the discharge of a duty expressly or impliedly assigned to him by law—*Gopi v. Shesho*⁽⁴⁾. In that case also it is said that the allegation of an official justification must amount to something more than a mere pretext or colour.

We do not think it a justification that an ábkári officer ordered the bullocks to be taken by force. We do not understand why the District Judge considered the act of impressment official.

(1) *Ante* p. 754.

(2) I. L. R., 9 Bom., 553.

(3) I. L. R., 11 Bom., 370.

(4) I. L. R., 12 Bom., 358.

Regulation IV of 1818, section 52, was repealed long ago. Regulation XXII of 1827, Chapter 7, only applies to military forces on the march. As remarked by the Subordinate Judge, the rules about impressment of carts found in Chapter I of Nairne's Revenue Hand-book were held in *In re the petition of Rakhmajji*⁽¹⁾ not to have the force of law. It is not clear that these rules actually order the village pátel to impress carts against the owner's will, neither is it clear what officers are to be supplied. There is nothing to show that any law ever imposed this duty on a kulkarni, or that provision was made after the repeal of the Regulation of 1818, as regards pátels, except for military bodies. The decision in *Rakhmajji's case* was passed in 1885; and we think we must treat the law as generally known, and hold that the defendants pátel and kulkarni did not act with due care and attention or under colour of office in seizing the plaintiff's bullocks. The Court reverses the decree of the District Judge and restores that of the Subordinate Judge, with costs of both appeals on the respondents.

Decree reversed.

(1) I. L. R., 9 Bom., 553.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Parsons.

CHINAYA (ORIGINAL APPLICANT), APPLICANT, *v.* GANGAVA AND ANOTHER (ORIGINAL PLAINTIFF), OPPONENT.*

1896.

March 3.

Execution—Decree—Mámlatdár—Dispossession of a third person not a party to suit—Jurisdiction of Mámlatdár—Remedy of person so dispossessed—Civil Procedure Code (Act XIV of 1882), Sec. 622—Practice—Procedure.

G. got a decree for possession against P. in a Mámlatdár's Court. In execution the Mámlatdár directed the ouster of C., who was in possession and who was not a party to the decree.

Held, that the Mámlatdár's order for the execution of the decree by the ouster of C. was without jurisdiction, and that it should be set aside under section 622 of the Civil Procedure Code (Act XIV of 1882).

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the order of Ráo Sáheb S. V. Mensenkai, Mámlatdár of Belgaum.

* Application No. 235 of 1895 under the Extraordinary Jurisdiction.